

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 63356-2-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
HUMBERTO VELAZQUEZ-MEDINA,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 7, 2010
_____)	

Becker, J. — Humberto Velazquez Medina¹ was convicted of delivery of a controlled substance, conspiracy to deliver a controlled substance, and maintaining a vehicle for drug trafficking purposes. He appeals the last conviction only. We conclude the State presented insufficient evidence to support that conviction where there was no continuing course of conduct indicating Velazquez kept a vehicle for the purpose of selling drugs.

To determine whether evidence is sufficient to sustain a conviction, we review the evidence in the light most favorable to the prosecution and ask

¹ Although the State charged the defendant as “Humberto Velazquez-Medina,” the defendant does not sign his name with a hyphen. It is commonplace for people of Latin-American origin or descent to use two last names without hyphenating them. The record also contains misspellings of Velazquez’s name as “Velasquez.” Hereafter, we refer to the defendant as Velazquez.

whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003). The State charged Velazquez with maintaining a vehicle for drug trafficking in violation of RCW 69.50.402(1)(f). The statute makes it unlawful to knowingly: “keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.” In this case, the State charged Velazquez with keeping a vehicle for the purpose of selling drugs.

The statute has been referred to as the “drug house statute,” and many states have similar laws. State v. Ceglowski, 103 Wn. App. 346, 348, 351-52, 12 P.3d 160 (2000); see generally 24 A.L.R.5th 428 (discussing validity and construction of such statutes). The words “keep” and “maintain” in the Washington statute connote continuing conduct and require proof that drug activity is a substantial, rather than incidental, purpose for maintaining the premises. Ceglowski, 103 Wn. App. at 347-48, 350-51.

In Ceglowski, police officers executed a search warrant on a bait and tackle shop, where they found a small tray with traces of brown powder, two baggies with a small amount of brown powder later identified as methamphetamine, \$600 in cash, a marijuana pipe, a small scale, and ten pages

of account records consistent with the type kept to record drug transactions. Ceglowski also had money in his pockets that police identified as the same money used for a controlled buy minutes before they executed the warrant. A jury found Ceglowski guilty of knowingly keeping or maintaining a store in violation of the “drug house statute” and acquitted him on other charged counts. Ceglowski, 103 Wn. App. at 348-49.

On appeal, the court noted that finding the informant’s cash in Ceglowski’s pockets supported the reasonable inference that a single drug sale was conducted in the shop. But there was no evidence that any other drug sale had occurred there, as the account sheets may or may not have been drug related. Thus, the court concluded the evidence did not support a reasonable inference that keeping or selling drugs was a substantial purpose for maintaining the bait and tackle shop, nor did it establish a continuing pattern of criminal activity there.

Last year, this court applied Ceglowski and determined that sufficient evidence supported a conviction for maintaining a vehicle for drug trafficking. State v. Marin, 150 Wn. App. 434, 438-40, 208 P.3d 1184, review denied, 167 Wn.2d 1012 (2009). Police conducted a vehicle search incident to Marin’s arrest and found a blue bag hidden inside an armrest. The bag was filled with a pipe, a small digital scale, and plastic baggies containing more than 45 grams of methamphetamines worth thousands of dollars. Police also found two small

baggies containing trace amounts of apparent drug residue, a small canister in the van's unlocked glove compartment containing 6.1 grams of methamphetamines, and a key fob in the van's center console containing 1.85 grams of methamphetamines. With the aid of a drug sniffing dog, police discovered a large hidden compartment under the hood of the van. Marin, 150 Wn. App. at 437-39. Forensic evidence showed the hidden compartment "had only recently been built into the van." Marin, 150 Wn. App. at 439. This evidence was held sufficient to establish that the vehicle was used for illegal drug activity of a recurring nature and that conducting such activity was a substantial purpose of maintaining the vehicle.

Here, the State presented evidence that Velazquez drove two different trucks on his way to two separate incidents of drug related activity. The first occurred on January 7, 2008, in a parking lot. A confidential informant had arranged to buy an ounce of methamphetamine from Velazquez. The two had agreed to meet at Velazquez's trailer home, but the defendant changed the location at the last minute. Velazquez drove up in a white Dodge truck, but the sale actually took place in the informant's truck. There was evidence that Velazquez regularly drove the white Dodge truck at times other than the observed sale.

The second controlled buy occurred two weeks later, on January 22, 2008. Again, the arrangement was to meet at the trailer, but Velazquez changed

the location for the deal two more times and did not come himself; another man delivered the drugs while the informant drove behind an apartment complex. The informant tried to arrange a third buy. This time, Velazquez showed up, driving a brown Mazda truck, but he did not have any drugs. He allegedly told the informant he would go pick up some methamphetamine from a supplier, but after waiting for a while, police called off the buy.

At most, the jury heard evidence that Velazquez drove one truck to the first controlled buy, completed another sale through an accomplice and without using a vehicle, and drove another truck to the last attempted buy. This is evidence of a continuing pattern of drug related activity involving Velazquez. But it is more of a stretch to say it is evidence of a continuing pattern of drug trafficking involving his vehicles.

There was police testimony that drug dealers will often use inexpensive vehicles for drug deliveries, vehicles that are registered in someone else's name, to protect against loss from forfeiture if they are apprehended. The manager at the trailer park where Velazquez lived testified that he registered the brown Mazda as his car with the trailer park and that he had only recently started driving the white truck. Velazquez told an officer during a traffic stop that he had just bought the white Dodge truck and had not had a chance to transfer the title or buy insurance for it. There was no evidence of Velazquez registering the trucks in someone else's name, so the State's effort to put Velazquez into

the typical pattern fell short.

The State also points to the manager's testimony about vehicles coming and going at Velazquez's trailer for short stays. In addition, on the day of the last attempted buy, Velazquez was observed driving the brown truck erratically, like someone who wants to check if he is being followed. This evidence, along with the observed transactions, supports the conclusion that Velazquez was a drug dealer. But the evidence in this record does not support the conclusion that drug trafficking was a substantial, rather than an incidental, purpose for Velazquez to keep either of the vehicles.

Because the evidence was insufficient, the trial court should have granted the defendant's halftime motion to dismiss. We reverse the conviction for maintaining a vehicle for drug trafficking with instructions to the trial court to dismiss the charge with prejudice.

Becker, J.

WE CONCUR:

Schiveller, J

Seemayon, J